IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13045 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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ILLABEN ASHWINBHAI SHAH - Petitioner(s)
Versus
THE STATE OF GUJARAT THRO' THE DY. SECRETARY, & 2 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1,MR MR PRAJAPATI for Petitioner(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 02/11/2006

ORAL JUDGMENT

1.0 By way of this petition, the detenu has challenged the order of detention dated 23.06.2006 passed by Commissioner of Police, Vadodara City under the provisions of sub-Section (2) of Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter referred to as the 'PASA Act').

2.0 Learned Advocate for the detenu has invited my attention to the order of detention dated 23.06.2006 by which detenu was arrested and sent to Sabarmati Central Jail as well as to the grounds supplied therein. As the grounds of detention, one criminal case is shown as registered against the detenu which pertains to 'Immoral Traffic'.

2.1 He has further submitted that in the order of detention it was stated that the detenu is carrying on anti-social activities and on the basis of one offence of 'Immoral Traffic' registered against the detenu, the Authority came to the conclusion that she falls within the meaning of Section 2(g)of the P.A.S.A. Act. It was also stated in the impugned order that as the said 'Immoral Traffic' activities of the detenu are dangerous and affecting maintenance of 'public order' and 'public health', order of detention has been passed against her.

2.2 He has submitted that on the basis of one

criminal cases registered against the detenu, it cannot be said that the activities of the detenu has become prejudicial to the maintenance of 'Public Order'. In support of his case he has placed reliance on a decision of this Court passed in the case of ***"Sohanlal Surajram Visnoi Vs. State of Gujarat and Ors."*** reported in 2004(2)GLR 1051 wherein it was held as under,

> "It may be noted that the contention advanced on behalf of the petitioners that no preventive detention order can be recorded in a solitary incident or instance or offence cannot be accepted in *toto*. **The detaining authority can pass the order of detention even on the basis of a solitary incident or instance, provided there is justifiable subjective satisfaction on objective material and consideration that such incident or offence is likely to create disturbance of "Public Order". Emphasis is laid on "Public Order" and not on "Law and Order"** which belongs to the realm of general law..."

2.3 Hence, he has submitted that the impugned order deserves to be quashed and set aside.

3.0 On the contrary, learned A.G.P. for respondent-detaining Authority has supported the

order of detention as well as grounds stated therein and has contended that the Authority has passed the impugned order after taking into consideration all the facts and circumstances of the case, and hence, no case is made out calling for interference of this Court.

4.0 As a result of hearing and perusal of the record it appears that in this case the only material is one criminal cases registered against the detenu and on the basis of that it cannot be said that the activity of the detenu has become a threat to the maintenance of 'public order' and 'public health'. The offence registered against the detenu pertains to 'Immoral Traffic' to which I have already made reference in my earlier part of the judgment. Mere involvement of detenu in 'Immoral Traffic' activities may not amount to dangerous activity by detenu and mere mention of them unless supported by any evidence cannot be said to be material and germane for the purpose of arriving at subjective satisfaction that the activity of the detenu is prejudicial to the

maintenance of 'public order' and 'public health'. Even if the allegations of 'Immoral Traffic' made against the detenu are considered to be true there may be only breach of 'law and order' and not 'public order'.

4.1 In above view of the matter, I am of the view that the detaining authority has passed the order of detention without there being any credible or cogent material on record in this behalf. I have considered factual and legal aspects emerging from the record and considered the rival submissions and the facts of the case and also considered the judgment of this Court in the case of ***"Sohanlal Sujaram Visnoi"*** (Supra). In view of the facts and circumstances of the present case and in view of the ratio laid down in the decision mentioned above, the order of detention cannot be sustained and it deserves to be quashed and set aside.

5.0 In the result, this petition is allowed. The order of detention dated 23.06.2006 passed by

Commissioner of Police, Vadodara city is hereby quashed and set aside. The detenu is, therefore, ordered to be set at liberty forthwith, if she is not required in connection with any other case by the Authority. Rule is made absolute accordingly. Direct service is permitted.

(K.S. Jhaveri,J.)

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